



Axway Appcelerator Enterprise Ordering Agreement

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS

This Product contains computer programs and other proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of this Enterprise Ordering Agreement ("Agreement").

This Agreement is a legally binding document between between the organization that will make the end-use of the Product (the "Customer") and Axway Inc., a Delaware company with its principal place of business at 6811 E. Mayo Blvd, 4th Floor, Phoenix, AZ USA ("Axway"). This Agreement governs Customer's use of the Product except to the extent all or any portion of the Product: (a) is the subject of a separate written agreement between Axway and Customer; or (b) is governed by a third party licensor's terms and conditions. Capitalized terms have the definitions in Section 1 or as otherwise indicated below.

By clicking on the "Agree" or "Accept" or similar button at the end of this Agreement, or by executing an Order Form which references this Agreement, or by proceeding with the installation, use or reproduction of this Product, or authorizing any other person to do so, you are representing to Axway that you are authorized to bind the Customer, and that you are agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement. If the terms of this Agreement are considered an offer by Axway, use of the Product by Customer is expressly limited to the terms of this Agreement, to the exclusion of all other terms.

If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement, (i) click on the "Cancel" or "Decline" or other similar button at the end of this Agreement and/or immediately cease any further attempt to install or use this Product for any purpose, (ii) remove any partial or full copies made from this Product; and (iii) return the Product, along with proof of purchase, to the company from whom you obtained the Product. In such event, no license shall be deemed to have been granted by Axway.

This Agreement governs Customer's procurement and use of all Products and Services ordered by Customer direct from Axway, as well as those ordered by Customer from a reseller, except as may be expressly provided for in a separate written agreement between Axway and Customer. Customer understands and agrees that this Agreement allows Customer to use Products and Services only for purposes of developing Applications associated with Customer's or its Affiliates' brand and business and for distribution to Customer's employees, suppliers or end user customers for purposes of interacting with Customer's own systems, products and services ("Enterprise Apps"). If Customer is or wishes to be in the business of developing Applications for other enterprises or unaffiliated third parties, Customer may request a separate written agreement that would provide for such additional license rights, which must be mutually agreed between Axway and Customer and shall address appropriate license fee models, including, without limitation, revenue share arrangements.

1. DEFINITIONS.

1.1 "Affiliates" shall mean, with respect to a party, an entity controlled by, controlling, or under common control with such party, where control is the direct or indirect ownership of fifty percent (50%) or more of the voting securities of the entity, or where there are no voting securities, the ability to direct or control the management or operations of the entity.

1.2 "API Calls" shall mean network request made by the Application to Axway's servers to store data, retrieve data, and/or trigger communication events.

1.3 "App Users" means the users of the Application(s).

1.4 "Application(s)" shall mean the software application(s) that Customer will develop using the Products.

1.5 "Communication Events" shall mean a push notification sent to an App User's mobile device, or an email sent to an App User's email account. A single API call made by the Application may trigger multiple communication events.

1.6 "Device" means a single unique registered mobile device (e.g. smart phone, iPad, simulator, etc.). Multiple Devices can be licensed and each Device shall be uniquely registered and counted as an individual license. The number of Devices licensed shall be set forth on the applicable Order Form. Once a Device is allocated, it may not be reallocated for twelve (12) months.

1.7 "Documentation" shall mean the published end-user guides and manuals customarily provided by Axway to developers for use with the Products.

1.8 "Error" shall mean a failure of the Product to conform in any material respect with the applicable Documentation.

1.9 "Maintenance Fix" shall mean a later version of the Product, designated by Axway by means of a change in the digit to the right of the Version number (e.g. x.x.1, x.x.2).

1.10 "Named Contact" shall mean a trained employee of Customer set forth in an applicable Order Form who is entitled to contact Axway for Support Services. If an individual ceases to be an employee of Customer, Customer may designate another Named Contact by providing Axway prior written notice.

1.11 "Named User" shall mean the unique individual who is authorized to access and use the Products on behalf of Customer (Customer's employees, independent contractors, etc.). Named Users may not share access with any other users. If an individual ceases to be an employee of Customer, Customer may transfer the license to another Named User. The number of Named Users licensed to use the Product shall be set forth on the applicable Order Form.

1.12 "Open Source Software" shall mean various third party open source software components licensed under the terms of applicable third party open source license agreements contained in the Product. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions.

1.13 "Order Form" shall mean an Axway order form, executed by Customer, pursuant to which Customer orders Subscriptions for the Products and Support Services from Axway.

1.14 "Product(s)" shall mean the licensed Axway Appcelerator software platform and tools set forth in an applicable Order Form and any Upgrades thereto provided as part of Support Services.

1.15 "Release" shall mean a version of the Product that Axway identifies with a change in the first digit of the Product version (e.g. 2.x, 3.x, 4.x).

1.16 "Runtime Products" shall mean the runtime portion of the Products.

1.17 "Services" means services provide by Axway or its designee to Customer and may consist of (i) services for the support and maintenance of standard Products as described in Axway's Global Support Policies and Procedures, available at <https://support.axway.com> ("Support Services"); or (ii) consulting and training services provided by Axway pursuant to a separate Statement of Work that are not Support Services ("Professional Services").

1.18 "Statement of Work" shall mean the detailed, written, and mutually-executed description of the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information.

1.19 "Subscription Term" means the period in which Customer has paid the applicable annual fees for Subscriptions.

1.20 "Subscriptions" shall mean licenses and Support Services for the Products provided by Axway on a term basis.

1.21 "Upgrade" shall mean a Release, Version or Maintenance Fix to the Products that Axway makes generally available to licensees of the Products as part of Support Services.

1.22 "Version" shall mean generally commercially released code corrections, patches, and minor version releases of the same Product as designated by a change in the number to the right of the decimal in the version number (e.g. x.4, x.5, x.6).

2. LICENSE GRANT AND SUPPORT.

2.1 General License Grant. Axway grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license during the Subscription Term (with no right to sublicense) to use (i) the Product for Customer's internal business purposes; (ii) the Documentation related to Product for the purpose of supporting Customer's use of the Product; and (iii) notwithstanding the foregoing, Customer is granted a perpetual license to use the Runtime Products incorporated into the Application(s) created during the Subscription Term. Licenses granted to Customer shall commence on the date Customer is notified of electronic availability of the Product, as applicable.

2.2 Licensing Models. The Product is licensed for use only in accordance with the commercial terms and restrictions of the Product's relevant licensing model, which are stated in the Axway Order Form. For example, the licensing model may provide that the Product is licensed for use solely (i) by a certain number of Named Users; (ii) to produce a certain number of Applications; (iii) and/or for ACS (as defined

below), a mobile backend service, with a defined number of API Calls, Communication Events, storage and emails; (iv) and/or in connection with certain number of Devices for; (v) and/or includes Axway Mobile Analytics: Performance Management.

2.3 License Restrictions. Customer is granted no rights in the Products other than those limited rights expressly set forth in Section 2.1 and 2.2 and any reproduction, use or commercialization outside the scope of the limited licenses will be un-licensed infringement and shall cause all licenses to expire. Axway expressly reserves to itself title, ownership and all rights not granted to Customer. The Products and the Documentation are licensed, not sold. Customer acknowledges that the Product constitutes a valuable trade secret of Axway. Accordingly, except as expressly permitted in this Agreement, Customer agrees not to and shall not allow any third party to: (a) modify, adapt, alter, recast, transform, translate or create derivative works from the Product (and if Customer violates this restriction, Customer shall transfer, and hereby does transfer, all intellectual property rights and other rights to resulting modifications or works to Axway, in addition to, not in lieu of other rights and remedies Axway may have as a result of the violation); (b) use (or cause or permit to be used) the Product for rental, lease, service bureau or application service provider, as part of an application service provider or software as a service offering, or to provide services to third parties (and, if Customer violates this restriction, then Customer shall transfer to Axway all revenue generated from the unlicensed activities, in addition to, not in lieu of other rights and remedies Axway may have as a result of the violation); (c) distribute, sublicense, repackage, lease, rent, sell, loan or otherwise transfer the Product or Application(s) to any third party or title, ownership or reproduction rights (beyond licensing an Application to an App User via an App Store) to any third party except Affiliates; (d) reverse engineer, decompile, or disassemble the Product, except to the extent such activities are permitted under applicable mandatory laws that may not be limited by contract, potentially including, without limitation, laws implementing EU Directive 91/250/EEC provided, however, that Customer shall not exercise any such rights without giving Axway thirty (30) days prior written notice and an opportunity to provide interoperability information or other items to Customer to alleviate the need to engage in the activities that are prohibited under this Agreement; (e) except for the back-up purposes the Product may not be copied or otherwise reproduced; (f) remove, alter or obscure in any way any copyright or other proprietary rights on or within the Product and or the Documentation; (g) build a product or service competitive to Axway's Products and/or Services utilizing trade secrets, Products, Services or other items made available by Axway hereunder; (h) use any Axway product licensed under a separate agreement to support any Application developed with Products licensed under this Agreement; or (i) copy any features, functions or graphics of the Products, except as necessary to use the Product.

2.4 Open Source Software. The Open Source Software is licensed under the terms of the applicable third party open source license conditions and/or copyright notices that can be found in the licenses directory, the Documentation or other materials accompanying the Products, or from Axway upon reasonable request. Copyrights to the Open Source Software are held by copyright holders indicated in the copyright notices in the licenses directory or other published materials regarding the Products or such Open Source Software.

2.5 Support Services. During the time that Customer is current in the payment of the applicable Subscription fees, Axway shall provide Customer with Support Services for the Products to Customer in accordance with Axway's Global Support Policy and Procedures. Customer agrees to provide Axway with such cooperation, materials, information, access and support which Axway deems to be reasonably required to allow Axway to successfully provide the Support Services.

3. PROFESSIONAL SERVICES.

Axway will provide Customer with the Professional Services specified in an applicable Order Form or Statement of Work ("Statement of Work") entered into between the parties pursuant to the terms herein. Customer agrees to provide Axway with such cooperation, materials, information, access and support that Axway deems to be reasonably required to allow Axway to successfully provide the Professional Services. Customer acknowledges and agrees that such cooperation and provision of access and information are essential to Axway's ability to perform the Professional Services. Customer acknowledges that in order for Axway to provide the Professional Services, Customer may be required to license and install certain third party software and provide certain third party hardware that are not provided or licensed by Axway ("Third Party Products"). Such Third Party Products will be set forth in the applicable Statement of Work. Axway may provide Customer with links and instructions for obtaining Third Party Products, but it is Customer's responsibility to properly license and install any required Third Party Products from the relevant third party providers. Axway will have no liability with respect to any Third Party Products.

4. TITLE AND PROPRIETARY RIGHTS.

4.1 Title. Title to the Products shall not pass from Axway to Customer or any App User, and the Products and all master copies thereof shall at all times remain the sole and exclusive property of Axway. Unless Axway agrees otherwise in a duly signed writing, Axway shall own all right, title and interest in and to any modifications and derivations of the Products made by or on behalf of Customer, whether authorized in writing by Axway or otherwise, and Customer will promptly deliver any such modifications and derivations to Axway. Customer hereby irrevocably transfers, conveys and assigns to Axway all right, title, and interest in and to modifications and derivations of the Products. Customer shall own all right, title and interest in and to the Application(s), subject to Axway owning all right, title and interest in and to the Products and any information and other items that Axway makes available to Customer. Axway shall have, and Customer hereby grants to Axway a non-exclusive, royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into its Services or Products any suggestions, enhancement requests, recommendations or other feedback provided by Customer.

4.2 Proprietary Rights in Professional Services.

(a) Ownership. "Intellectual Property" means all intellectual property rights ("IP"), including patents, trademarks, design rights, copyrights, database rights, trade secrets and all rights of an equivalent nature anywhere in the world. "Deliverables" means tangible work which Axway provides to Customer pursuant to a Statement of Work or other ordering documentation hereunder. Unless otherwise specified in the

applicable statement of work or ordering document, Axway owns all IP developed hereunder, except that each party retains its own pre-existing IP, and any enhancements, modifications, derivatives thereto or improvements thereof. Subject to Customer's payment in full therefor, Axway grants to Customer a perpetual, royalty-free and non-exclusive license to use and modify the Deliverables for its internal use only, subject to any other express supplemental license terms otherwise applicable to the Deliverable, and to make a reasonable number of copies of the Deliverables for internal use.

(b) License Grant. Subject to the terms and conditions of this Agreement, Axway grants Customer the worldwide, non-exclusive, non-transferable, non-sublicenseable, perpetual, irrevocable (except for uncured material breach) right to use, copy, and create derivatives of any materials provided by Axway in the course of performing Professional Services solely for Customer's internal business operations as contemplated by the applicable Statement of Work. The foregoing license excludes Axway's generally available products which are licensed via separate ordering agreement or pre-released products Customer may have received from Axway under a separate testing agreement.

(c) Reservation of Rights. Axway reserves all rights not expressly granted to Customer in this Agreement. Except as expressly stated, nothing herein shall be construed to (1) directly or indirectly grant to a receiving party any title to or ownership of a providing party's intellectual property rights in services or materials furnished by such providing party hereunder, or (2) preclude such providing party from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Services or materials provided hereunder. Notwithstanding anything to the contrary herein, Customer acknowledges that Axway has the right to use any Customer provided materials solely for the benefit of Customer in connection with the Services performed hereunder for Customer.

5. FEES.

5.1 Payment Terms. Customer shall pay to Axway all fees under this Agreement as set forth in an applicable Order Form and/or Statement of Work. Unless otherwise agreed to in the applicable Order Form, all fees will be paid by Customer to Axway within thirty (30) days from the receipt of Axway's invoice, in the currency stated in the Order Form (United States Dollars if no currency is otherwise specified). Customer shall reimburse Axway for all mutually agreed expenses incurred by Axway personnel in providing the Services. Customer shall bear all costs and expenses of building, marketing and distributing the Application(s). Payments will be made without right of set-off or chargeback. All payments not made when due shall accrue interest at the higher of: (i) the rate of one percent (1%) per month or (ii) the highest rate permitted by law. If payment of any fee is overdue, Axway may also suspend provision of the license or Support Services until such delinquency is corrected. Customer shall pay any taxes, duties or charges of any kind (including any sales, withholding or value added taxes) imposed by any federal, state or local governmental entity for products or services provided under this Agreement excluding only taxes based solely on Axway's net income. If any applicable law requires Customer to withhold amounts from any payments to Axway under this Agreement, (a) Customer will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Axway with tax receipts evidencing the payments of such amounts and (b) the sum payable by Customer upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Axway receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Axway would have received and retained absent the required deduction or withholding.

5.2 Delivery of the Products. Promptly upon execution of this applicable Order Form, Axway shall deliver the Products and Documentation to Customer via electronic download, ex works Axway's premises. All Products delivered shall be deemed accepted by Customer upon electronic availability.

5.3 At Axway's request, but in no event more than once per calendar, and upon reasonable prior written notice, Axway may audit Customer's Product usage and records to ensure that Customer is using the Products and/or Support Services in compliance with this Agreement. Any such audit will be conducted during regular business hours at Customer's offices and will not interfere unreasonably with Customer's business activities. If an audit reveals that Customer has underpaid Customer's total fees by more than five percent (5%), then Customer will pay Axway's reasonable costs of conducting the audit, in addition to the underpaid amount. The Product may also connect to the Internet at any time to confirm compliance with this Agreement.

6. TERM AND TERMINATION.

6.1 Product Subscription Term. Subscriptions shall commence on the date of electronic availability of the Product (which may be a test environment if applicable under the circumstances) and continue for the period specified on the Order Form. Renewals of Subscriptions shall commence and expire in accordance with the dates on the applicable Order Form.

6.2 Termination for Convenience.

(a) By Axway. Axway may terminate this Agreement or any Subscription for its convenience with sixty (60) days prior notice and Customer's sole and exclusive remedy and Axway's sole and exclusive obligation shall be to refund to Customer the portion of any pre-paid Subscription fee that corresponds to the period between the effective date of the termination for convenience and the end of the then current Subscription period. Statement(s) of Work shall be terminated in accordance with the termination provisions set forth in the applicable Statement of Work.

(b) By Customer. If Customer terminates a Subscription for its convenience, Customer shall not be entitled to a refund on any prepaid Subscription Fees. Statement(s) of Work shall be terminated in accordance with the termination provisions set forth in the applicable Statement of Work.

6.3 Termination for Breach. Either party may terminate the Subscription for a Product or Statement of Work for cause due to a failure of the other party to comply with the terms of this Agreement with regard to such Product or Statement of Work, provided that the terminating party has given thirty (30) days' written notice specifying the failure and the other party has not remedied the failure within such time. If Axway terminates the Subscription for any Product(s) due to Customer's failure to remedy the breach, such termination shall be without further liability for Axway and without any obligation to refund any fees already paid therefore. If Customer terminates for Axway's unremedied breach, Customer's sole and exclusive remedy and Axway's sole and exclusive obligation shall be to grant a refund for that portion of any pre-paid Subscription fee that corresponds to the period between the effective date of the termination for breach and the end of the then current Subscription period.

6.4 Either party may terminate this Agreement, effective immediately upon written notice, under the following circumstances:

(a) If either party materially breaches any term of this Agreement and such breach has not been cured within thirty (30) days after the other party has given written notice of such breach, the non-breaching party may terminate this Agreement.

(b) If either party should: (i) admit in writing its inability to pay its debts generally as they become due; (ii) make a general assignment for the benefit of creditors; (iii) institute proceedings to be adjudicated a voluntary bankrupt or consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any

bankruptcy act, or consent to the filing of a petition seeking such reorganization; or (vi) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee or assignee in bankruptcy or insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs.

6.5 Effect of Termination. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive. Upon termination or expiration of the Subscription, the licenses granted hereunder shall terminate (except those set forth in Section 2.1(iii)) and Customer shall have no further rights to receive Support Services. Customer shall immediately discontinue use of the Products and shall certify destruction of all copies of the Product thereof in its possession to Axway. Upon any termination of this Agreement for cause by Axway, Customer shall pay any unpaid fees that became due prior to the effective date of termination. All proprietary and confidential information shall be promptly returned to Axway. Termination of this Agreement shall not relieve Customer of any of its payment obligations.

6.6 Survival of Certain Conditions. Notwithstanding anything to the contrary contained in this Agreement, Section(s) 1 ("Definitions"), 2.3 ("License Restrictions"), 4 ("Title, and Proprietary Rights"), 5 ("Fees"), 6.5("Effect of Termination"), 6.6 ("Survival of Certain Conditions"), 8.4 ("Warranty Disclaimer"), 9.2 ("Customer Indemnity"), 10 ("Confidential Information"), 11 ("Limitation of Liability; Allocation of Risk"), and 12 ("Miscellaneous Provisions") and shall in all cases survive any expiration or termination of this Agreement.

7. UPGRADES.

Axway agrees to make available to Customer during the time that Customer has paid the applicable Subscription fees any Upgrades at the same time that the relevant Upgrade is generally released to other customers who license the Products pursuant to Axway's ordinary release, support, and maintenance practices. Axway will notify Customer from time to time as Upgrades become available, which notification may occur via Axway's support portal available to Customer. All Upgrades will be licensed pursuant to the terms of this Agreement applicable to the Products. The Product may make Internet connections to remote servers to check for software Upgrades.

8. LIMITED WARRANTY.

8.1 Products. Axway warrants to Customer only, that for a period of thirty (30) days following the date the downloadable portions of the Products are electronically available for download, the Products will substantially conform to the description contained in the applicable Documentation ("Warranty Period"). If during the Warranty Period the Products do not substantially conform to the description contained in the applicable Documentation, Customer's sole and exclusive remedy and Axway's sole and exclusive liability for such breach of warranty shall be for Axway, at its option to, correct the defects in the Products or, if Axway is unable to correct the defect, Axway will accept the return of the defective Product in Customer's possession and Axway will refund the license fees paid by Customer for such defective Product.

8.2 Professional Services. Axway warrants that for a period of ten (10) calendar days following the performance of such Professional Services, the Professional Services to be performed hereunder will be done in a workmanlike manner and shall conform to standards of the industry. If the Professional Services are not performed as set forth above, Axway's entire liability, and Customer's sole remedy, for Axway's failure to so perform shall be for Axway to, at its option, (i) correct such failure, and/or (ii) terminate the applicable Statement of Work and refund that portion of any fees received that correspond to such failure to perform.

8.3 THE REMEDIES IN SECTION 8.1 AND 8.2 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY AND AXWAY'S SOLE AND EXCLUSIVE LIABILITY FOR BREACH OF WARRANTY. THE WARRANTIES IN SECTIONS 8.1 AND 8.2 ARE MADE TO AND FOR THE BENEFIT OF CUSTOMER ONLY. AXWAY SHALL HAVE NO LIABILITY HEREUNDER AFTER EXPIRATION OF THE APPLICABLE WARRANTY PERIOD. THE WARRANTIES WILL APPLY ONLY IF:

(a) the Products and Application(s) have been properly installed and used at all times and in accordance with the instructions in the applicable Documentation;

(b) no modification, alteration or addition has been made to the Products or Application(s) or Services except at Axway's express written direction; and

(c) Axway receives written notification of the breach during the applicable warranty period.

8.4 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION, THE PRODUCTS, THE DOCUMENTATION, SERVICES, AND APPLICATIONS, ARE PROVIDED "AS IS" WITHOUT ADDITIONAL WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY. AXWAY DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF USE, OF THE PRODUCTS, DOCUMENTATION, SERVICES, APPLICATION(S), OR WRITTEN MATERIALS IN TERMS OF CORRECTNESS, ACCURACY, COMPLETENESS, RELIABILITY, CURRENTNESS, OR OTHERWISE. AXWAY DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN ANY PRODUCTS, DOCUMENTATION, SERVICES, OR APPLICATIONS WILL MEET THE REQUIREMENTS OF CUSTOMER OR APP USER OR THAT THE OPERATION OF ANY SUCH PRODUCTS OR APPLICATIONS WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE PRODUCTS AND APPLICATION(S).

AXWAY MAKES NO OTHER WARRANTY OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AXWAY, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

9. INDEMNITY.

9.1 Axway Indemnity.

(a) Subject to the remainder of this Section, Axway shall defend Customer against any third party claims brought against Customer alleging that Customer's exercise of its rights under this Agreement with respect to Products licensed under this Agreement, or any portion thereof constitutes: (i) infringement of such third party's patent issued prior to the Effective Date or (ii) an infringement of such third party's copyright (collectively "Third Party Claims"). Axway shall also indemnify Customer from the resulting costs and damages finally awarded against Customer to the third party making such Third Party Claim by a court of competent jurisdiction or a settlement agreed to in writing by Axway ("Damages").

(b) Axway shall not be obligated to defend or be liable for costs and/or damages under this Section 9 if the alleged infringement arises out of or is in any manner attributable to: i) any combination with non-Axway products; ii) use for a purpose or manner for which the Product was not designed; iii) use of an older version of the Product when use of a new Axway revision made available to Customer would have avoided the infringement; iv) any modification of Products by Customer; (v) any modifications made by Axway pursuant to Customer's specific instructions; (vi) any technology owned or licensed by Customer from third parties or (vii) any Applications. Further, Axway's obligation to defend and be liable for costs and/or damages under this Section 9 are contingent upon Customer providing Axway with prompt notice of any actual, threatened, or reasonably likely Third Party Claim and granting Axway full control over the defense, resolution, and settlement of the Third Party Claim, except that Axway shall not voluntarily settle any such claim in a way that admits fault on the part of Customer or requires Customer to take any action other than cessation of use of the Products, without Customer's advance written consent which shall not be unreasonably withheld.

(c) If any Third Party Claim which Axway is obligated to defend has occurred, or in Axway's opinion is likely to occur, Axway shall have the right to, at Axway's option and expense, either procure for Customer the right to continue using the subject Products or Documentation or replace or modify such Products or Documentation with a functionally equivalent replacement or modification so that it becomes non-infringing. If Axway cannot reasonably provide Customer with a replacement or modification which is functionally equivalent to the subject Products or Documentation, the applicable license shall be terminated and Axway shall refund to Customer the prepaid but unused Subscription fees paid for the terminated Products.

(d) THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND AXWAY'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO THIRD PARTY INFRINGEMENT CLAIMS.

9.2 Customer Indemnity. Customer shall defend, indemnify and hold Axway harmless from and against all judgments, penalties, damages, settlements, costs and expenses (including reasonable legal fees and costs), losses or liabilities which may arise or result from: (a) any modifications or enhancements to a Product made by or on behalf of Customer; (b) any Application or Customer provided materials, or (c) Customer's breach of Section(s) 12.6 or 12.14, 13 or 14 of this Agreement, including but not limited to the failure of Customer to comply with all applicable laws and regulations regarding the collection and use of personal data and personally identifiable information or failure to provide any notices or terms of services as may be required by any laws, statutes and regulations.

9.3 Obligations of the Indemnified Party. Each party's indemnification obligation is contingent upon the indemnified party (a) giving prompt written notice to the indemnitor of any such claim, (b) allowing the indemnitor to control the defense and related settlement negotiations provided however that indemnitor will obtain indemnitee's prior consent, which shall not be unreasonably withheld or delayed, of any settlement of such a claim that admits fault on the part of indemnity or that requires indemnitee to take or refrain from taking any particular action, and (c) fully assisting in the defense at the indemnitor's request, so long as the indemnitor agrees to pay the indemnified party's reasonable expenses in connection therewith. Indemnitee may participate in such defense and in any settlement discussions directly or through counsel of Indemnitee's choice at indemnitee's cost.

10. CONFIDENTIAL INFORMATION.

10.1 Axway and Customer may disclose to each other certain Confidential Information (defined below). The party receiving the Confidential Information (the "Receiving Party") agrees that the Confidential Information is the sole and exclusive property of the party disclosing the Confidential Information (the "Disclosing Party") and that the Disclosing Party owns all world-wide rights therein under patent, copyright, trade secret, confidential information, or other proprietary rights. The disclosure of the Confidential Information to the Receiving Party does not confer upon the Receiving Party any license, interest or rights of any kind in or to the Confidential Information. The Receiving Party shall hold in confidence and will not, directly or indirectly, use, reproduce, distribute, reverse engineer, decompile, transfer, or disclose the Confidential Information or any portion thereof other than as necessary to perform its obligations or exercise its rights under this Agreement. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to its parent company, Affiliates, or major shareholders who are subject to a duty of confidentiality with respect to information received from such party that is no less restrictive than the provisions of this Section 10. The Receiving Party shall return to the Disclosing Party all Confidential Information, together with all copies and material relating thereto (a) upon termination or expiration of this Agreement for any reason, or (b) upon request by the Disclosing Party.

10.2 Axway's and Customer's obligations with regard to the Confidential Information shall remain in effect during the term of this Agreement and for a period of two (2) years thereafter. As used herein, "Confidential Information" means non-public information of the Disclosing Party that is disclosed to the Receiving Party pursuant to this Agreement in tangible form and labeled "confidential" or the like, or if disclosed orally, are identified as being confidential at the time of disclosure and are followed up within two (2) weeks in a tangible form that is appropriately labeled, or which any reasonable person under the circumstances would understand the information to be confidential in nature or disclosed with an expectation of confidentiality. The Products and Documentation shall be deemed the Confidential Information of Axway, irrespective of whether they are marked or identified as confidential information. Notwithstanding the foregoing, Confidential Information shall not include any information: (a) is already known to the Receiving Party at the time of disclosure, which knowledge the Receiving Party shall have the burden of proving; (b) is, or, through no act or failure to act of the Receiving Party, becomes publicly known; (c) is received by the Receiving Party from a third party without restriction on disclosure; (d) is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party; or (e) is approved for release by written authorization of the Disclosing Party. In addition, a disclosure of Confidential Information (i) in response to a valid order by a court or other governmental body, or (ii) otherwise required by law, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that the party disclosing such information shall provide prompt written notice thereof to the other party to enable it to seek a protective order or otherwise prevent such disclosure.

10.3 Nothing in this Agreement will, or is intended to, limit Axway's ability to develop or enhance its products and services in any manner whatsoever, including use of residual knowledge, provided Axway does not disclose or otherwise use or make available any of Customer's Confidential Information.

11. LIMITATION OF LIABILITY; ALLOCATION OF RISK.

11.1 **Limitation of Liability.** AXWAY'S AND ITS SUPPLIER'S TOTAL AGGREGATE LIABILITY FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING HEREUNDER (AND ALSO INCLUDING ATTORNEY FEES AND COSTS RELATED THERETO), SHALL BE LIMITED TO PROVEN DIRECT DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, ANY CLAIM WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, IN AN AMOUNT NOT TO EXCEED THE FEES PAID BY CUSTOMER TO AXWAY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

11.2 **Exclusion of Damages.** TO THE FULL EXTENT ALLOWED BY LAW, AXWAY (AND ITS SUPPLIERS) EXCLUDES ANY LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR ANY DAMAGES THAT ARE NOT DIRECT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF AXWAY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

11.3 **Allocation of Risk.** Axway and Customer agree that the foregoing Section 11.1 and Section 11.2 on limitation of liability and the Section 8 above on warranties and warranty disclaimer fairly allocate the risks in the Agreement between the parties. Axway and Customer further agree that this allocation is an essential element of the basis of the bargain between the parties and that the limitations specified in this Section 11 shall apply notwithstanding any failure of the essential purpose of this Agreement or any limited remedy hereunder.

12. MISCELLANEOUS PROVISIONS.

12.1 **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto relating to the Products, Support Services and Documentation, supersedes any prior or contemporaneous written or oral agreement or understandings between the parties with respect to the Products, and cannot be changed or terminated orally. This Agreement may be amended only in writing signed by the authorized representatives of both parties hereto. Purchase orders will be for the sole purpose of defining quantities, prices and describing the Products to be provided under this Agreement, and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected, null, and void, even if Axway fulfills an order after receiving such purchase orders.

12.2 **Severability; Waiver.** If any provision in this Agreement is invalid or unenforceable, that provision shall be reformed to the maximum extent allowed by law to reflect the same economic effect as the invalid or unenforceable provision, and the other provisions of this Agreement shall remain in full force and effect. No waiver of any right under this Agreement shall be deemed effective unless contained in writing and signed by a duly authorized representative of the party purporting to make the waiver, and no waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver of any future right arising under this Agreement.

12.3 **Assignment.** Customer may not assign or otherwise transfer this Agreement, by operation of law or otherwise, without the prior written consent of Axway. All rights and obligations arising out of this Agreement shall inure to the benefit of, and be binding on and enforceable by the parties and the permitted successors and permitted assigns.

12.4 **Independent Contractors.** Customer and Axway shall perform their duties pursuant to this Agreement as independent contractors. Nothing in this Agreement shall be construed to create a joint venture, partnership or other joint relationship between Customer and Axway. Neither party shall have the ability to incur any obligation on behalf of the other party.

12.5 Marketing. Customer agrees that Axway may make reasonable use of Customer's pre-approved name and logos for marketing and promotional materials. Customer grants Axway the right to link to Customer's website. Customer will use reasonable efforts to arrange for appropriate personnel to be available to serve as references for the Products and Axway in the event of an inquiry from any member of the press, any industry analysts or any potential customer. Customer will work with Axway to prepare a case study/reference testimonial about the Products.

12.6 Compliance with Laws. Customer shall develop and use the Application(s) in accordance with all applicable laws and regulations, including (without limitation) export laws and regulations and those laws and regulations designed to protect against the unauthorized use and disclosure of personally identifiable information. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Products. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not access or use Product in violation of any U.S. export embargo, prohibition or restriction.

12.7 Government Licensee. The Products and related Documentation provided shall be "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in 48 C.F.R. 12.212 of the Federal Acquisition Regulations ("FAR") and its successors and 48 C.F.R. 227.7202 of the Department of Defense FAR Supplement ("DFARS") and its successors. In accordance with FAR 12.212 or DFARS 227.7202, as applicable, the Products and related Documentation are provided to all U.S. Government end-users with only those rights set forth in this Agreement.

12.8 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the United States of America and the State of Delaware without regard to its conflicts of laws provisions. Each party agrees that any claim or cause of action arising under or relating to this Agreement will be brought in a court of competent jurisdiction located in Delaware, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act (UCITA) will apply in any respect to this Agreement.

12.9 Force Majeure. Except for the obligation to pay fees which shall be made as soon as reasonably practicable in light of the force majeure event, a party's performance under this Agreement is excused if that party is unable to perform under this Agreement due to an event beyond its reasonable control, including without limitation, natural disasters, labor unrest, government restrictions, and the like.

12.10 Notices. All notices or other communications permitted or required to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if mailed first class mail, postage prepaid or sent by express overnight courier service to Axway at the address set forth above, to the attention of Legal Department, and to Customer at Customer's corporate headquarters address or to such other address as any such party may have designated by like notice forwarded to the other party hereto.

12.11 Data Analytics from App Users. Customer may disable the data analytics portions of the Product that collects anonymised data with regard to the Applications; however such disablement will cause Customer not to have access to the data analytics features of the Products. Should Customer elect to use the data analytics portions of the Products, Axway may collect certain information from App Users, including, but not limited to, platform, timestamp, device identifier, model, manufacturer, operating system, Titanium SDK version and geolocation data. Provided that Customer has paid the applicable data analytics fee, Axway will organize and make this information available to Customer on a regular basis. In addition, Axway shall have the right to use such information and to compile and distribute statistical analyses and reports utilizing aggregated data derived from this information. Customer may not create custom fields to collect and send personally identifiable information about its App Users to Axway.

12.12 Product Usage Data. In connection with the operation of the Products, Axway collects and receives data with regard to usage of the Products by Customer and its Named Users and may use such data in accordance with Axway's Privacy Policy, which includes, but is not limited to, (i) using such data for Axway's internal business purposes, (ii) disclosing such data to third parties in connection with the operation of the Products, (iii) disclosing such data as required by law or legal process, (iv) using and disclosing such data when it is not specifically identifiable to Customer, and (v) monitoring Customer's compliance with the terms of this Agreement. CUSTOMER UNDERSTANDS AND AGREES THAT THE PRODUCT MAY CONNECT TO THE INTERNET AND AXWAY'S SYSTEMS TO REPORT INFORMATION TO AXWAY THAT ENABLES AXWAY TO CONFIRM COMPLIANCE WITH THIS AGREEMENT AND COLLECT PRODUCT USAGE DATA AS SET FORTH IN THIS AGREEMENT AND THE AXWAY PRIVACY POLICY.

12.13 Axway Privacy Policy. Axway's privacy policy available upon request.

12.14 Customer Privacy Policy. In order to use the Products, Customer must have a privacy policy that discloses what data and other information of Customer's App Users and their devices that Customer is collecting and/or has Axway collect on Customer's behalf and (b) what uses Customer and/or Axway may make of any App User data or other information and their devices. Without limiting the foregoing, Customer's privacy policy must specifically state that a third party may collect data on Customer's behalf and other information from and about Customer's App Users and their devices.

13. USE OF THE AXWAY API RUNTIME SERVICES ("ACS"). ACS is designed to provide Customer with optional backend technology for cloud services enablement for Customer's Application. If Customer elects to deploy ACS in its Application(s) the ACS terms posted at <http://www.appcelerator.com/legal/acs-agreement/> shall apply to the Application's use of ACS and are expressly incorporated into this Agreement by reference. In case of a conflict between the ACS terms and the terms of this Agreement, the terms of the ACS shall control solely as to the provision of the ACS only.

14. USE OF THE AXWAY MOBILE ANALYTICS: PERFORMANCE MANAGEMENT ("PM").

14.1 Use. The PM specified in the Order Form entered into between Axway and Customer shall be used solely by Customer for bug fixing, performance monitoring/management and other analytics with respect to the Applications and shall be limited to the subscription term and the number of users specified in the Order Form. The Application(s) will include integration code (the "PM Integration Code") in order to transmit data from the Application(s) to the PM. The types of data transmitted and the frequency of transmission is determined solely by Customer through Customer's configuration of the PM Integration Code. Customer may reproduce and distribute the PM Integration Code solely when embedded within the Application(s) and used solely for the purpose of transmitting data from the Application(s) to the PM.

14.2 Data. Axway (or a third party vendor on Axway's behalf) collects, receives, and generates data in connection with Customer's use of the PM ("Customer Data") and in connection with App User's use of the Application(s) ("App User Data"). Customer grants Axway (and its third party vendors subject to confidentiality obligations) the right to use, reproduce and distribute the Customer Data and App User Data in connection with Customer's use of the PM. Customer further grants Axway (and/or a third party vendor on Axway's behalf) the worldwide, perpetual, irrevocable right to use, reproduce and distribute Customer Data and App User Data when it is aggregated with other information or otherwise is not specifically identifiable to Customer or any App User. Customer also consents to Axway's (and/or a third party vendor on Axway's behalf) disclosure of Customer Data and App User Data as may be required by law or legal process. Customer agrees not to transfer to Axway (and/or to any third party vendor acting on Axway's behalf) any App User Data that is personally identifiable information, financial information, health information, medical information, pharmaceutical information, information regarding children under 13 years of age, or other sensitive information (for example, Social Security Numbers), or that is used to target advertising to individual devices or App Users. Customer shall be solely responsible for ensuring that the Application(s) and Customer's use of the APMS (including without limitation Customer's provision of App User Data to Axway (and/or the third party vendor acting on Axway's behalf)) comply with all applicable laws, rules, and regulations. Customer shall obtain and maintain all rights required to permit the transfer of App User Data to Axway (and/or the third party vendor acting on Axway's behalf) and to allow to Axway (and/or the third party vendor acting on Axway's behalf) to use the App User Data pursuant to this Agreement.

14.3 Confidentiality. The PM shall be considered Confidential Information of Axway (and/or the third party vendor acting on Axway's behalf) and the Customer Data and App User Data shall be considered Confidential Information of Customer, and, subject to the terms of this Section 14, each party agrees to maintain the confidentiality of such information for the benefit of the other party in accordance with the terms of the Agreement.